

Representative Katherine M. Bryson proposes the following substitute bill:

ELECTRO SHOCK THERAPY AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

LONG TITLE

General Description:

This bill prohibits physicians, hospitals, and mental health facilities from administering electroconvulsive treatment without consent and requires reporting of all providers of electroconvulsive treatments.

Highlighted Provisions:

This bill:

- requires informed consent for the use of electroconvulsive treatment on adults;
- establishes the elements of informed consent;
- requires quarterly reporting of electroconvulsive treatment to the division and the Health Data Committee in the Department of Health;
- requires the division to enforce the reporting requirements and annually report statistical data regarding the use of electroconvulsive treatment to the governor and the Legislature; and
- sunsets the reporting requirements on July 1, 2009.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:



AMENDS:

17-43-308, as renumbered and amended by Chapter 22, Laws of Utah 2003

62A-15-704, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth

Special Session

ENACTS:

62A-15-1101, Utah Code Annotated 1953

62A-15-1102, Utah Code Annotated 1953

62A-15-1103, Utah Code Annotated 1953

62A-15-1104, Utah Code Annotated 1953

62A-15-1105, Utah Code Annotated 1953

62A-15-1106, Utah Code Annotated 1953

63-55b-162, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **17-43-308** is amended to read:

17-43-308. Specified treatments prohibited -- Criminal penalties.

(1) It is a misdemeanor to:

(a) give [~~shock treatment, lobotomy, or~~] surgery to anyone without the written consent of the person or the person's next of kin or legal guardian[-]; or

(b) give electroconvulsive treatment to a person without the written consent of the person in accordance with Section 62A-15-1102.

(2) Services provided under this part are governed by Title 58, Chapter 67, Utah Medical Practice Act.

~~[(2)]~~ (3) It is a felony to give psychiatric treatment, nonvocational mental health counseling, case-finding testing, psychoanalysis, drugs, [~~shock treatment~~] electroconvulsive treatment, lobotomy, or surgery to any individual for the purpose of changing his concept of, belief about, or faith in God.

Section 2. Section **62A-15-704** is amended to read:

62A-15-704. Invasive treatment -- Due process proceedings.

(1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic

medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section, and Part 11, Electroconvulsive Treatment Regulations, apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.

(3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);

(ii) with regard to psychosurgery and ~~[electroshock therapy]~~ electroconvulsive treatment, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and

(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

Section 3. Section **62A-15-1101** is enacted to read:

Part 11. Electroconvulsive Treatment Regulations

62A-15-1101. Application.

(1) For purposes of this part, "electroconvulsive treatment" includes prefrontal sonic sound treatment, or applied electrical voltage to the brain through electrodes which results in a grand mal seizure or epileptic seizure and which is administered to treat mental illness.

(2) This part applies to the use of electroconvulsive treatment by any person who uses

88 or administers electroconvulsive treatment, including:

89 (a) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title
90 58, Chapter 68, Utah Osteopathic Medical Practice Act;

91 (b) a hospital or facility licensed under Section 26-21-9;

92 (c) a local mental health authority subject to this title, its designee or providers; and

93 (d) the Utah State Hospital and other mental health facilities.

94 Section 4. Section **62A-15-1102** is enacted to read:

95 **62A-15-1102. Consent to treatment.**

96 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
97 division shall adopt administrative rules which establish a written consent form to be used
98 when electroconvulsive treatment is considered. The rule shall prescribe the information that
99 must be contained in the written consent for electroconvulsive treatment.

100 (2) The written consent form must clearly state at a minimum:

101 (a) the nature and purpose of the procedure;

102 (b) the nature, potential, and probability of the side effects and significant risks of the
103 treatment commonly known by the medical profession, especially noting the possible degree
104 and duration of memory loss, the possibility of permanent irrevocable memory loss, and the
105 possibility of death; and

106 (c) the probable degree and duration of improvement or remission expected with or
107 without the procedure.

108 (3) Before each treatment series begins, the physician administering the treatment shall
109 ensure that:

110 (a) the person receives a written copy of the consent form that is in the person's
111 primary language, if possible;

112 (b) the contents of the consent form are explained to the person:

113 (i) orally, in simple, nontechnical terms in the person's primary language, if possible; or

114 (ii) through the use of a means reasonably calculated to communicate with a hearing
115 impaired or visually impaired person, if applicable;

116 (c) the person signs a copy of the consent form stating that the person has read the
117 consent form and understands the information included in the documents; and

118 (d) the signed copy of the consent form is made a part of the person's clinical record.

119 (4) (a) A person who consents to the administration of electroconvulsive treatment may
120 revoke the consent for any reason and at any time.

121 (b) Revocation of consent is effective immediately.

122 Section 5. Section **62A-15-1103** is enacted to read:

123 **62A-15-1103. Reports.**

124 (1) A hospital or facility where electroconvulsive treatment is administered or a
125 physician administering the treatment on an outpatient basis shall submit to the division and to
126 the Health Data Committee created in Section 26-1-7, semiannual reports relating to the
127 administration of the treatment in the hospital or facility or by the physician.

128 (2) A report must be included for each hospital or facility:

129 (a) the total number of persons who received the treatment;

130 (b) the age, sex, and race of each person receiving the treatment;

131 (c) the diagnosis for each person receiving the treatment;

132 (d) the source of the payment for the treatment;

133 (e) the average number of electroconvulsive treatments administered for each complete
134 series of treatments, but not including maintenance treatments;

135 (f) the average number of maintenance electroconvulsive treatments administered per
136 month;

137 (g) the number of fractures, incidents of apnea, and cardiac arrests without death which
138 occurred within 14 days of the administration of the treatment, and the number of reported
139 complaints of severe and persistent memory losses which occurred within one year of the
140 administration of treatment;

141 (h) autopsy findings, including investigation of petichial hemorrhages and other small
142 blood vessel hemorrhages in the brain tissue, if an autopsy was performed and if death
143 followed within 14 days after the date of the administration of the treatment; and

144 (i) any other information required by the division.

145 Section 6. Section **62A-15-1104** is enacted to read:

146 **62A-15-1104. Use of information -- Report.**

147 (1) The division shall use the information received under Section 62A-15-1103 to
148 analyze and monitor the use of electroconvulsive treatment administered.

149 (2) (a) The division shall annually file with the governor and the Health and Human

Services Interim Committee of the Legislature a written report summarizing the information received under Section 62A-15-1103. The information in the report shall be summarized by hospital or facility.

(b) The division may not directly or indirectly identify in a report issued under this section a patient who received the treatment.

(c) The report prepared in accordance with this Subsection (2) is a public document under the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

Section 7. Section **62A-15-1105** is enacted to read:

62A-15-1105. Enforcement.

The division shall enforce the provisions of this part and may, as the division considers appropriate:

(1) issue a warning to any physician, hospital, or facility who fails to obtain consent or file a report required by this part; and

(2) report violations of this part to the appropriate licensing authority for the physician, hospital, or facility.

Section 8. Section **62A-15-1106** is enacted to read:

62A-15-1106. Consent to healthcare.

A health care provider who obtains informed consent in accordance with this part is considered to have also met the requirements for informed consent under Section 78-14-5.

Section 9. Section **63-55b-162** is enacted to read:

63-55b-162. Repeal dates -- Title 62A.

Sections 62A-15-1103 and 62A-15-1104 regarding reporting requirements for electroconvulsive treatments are repealed on July 1, 2009.

Section 10. **Effective date.**

This bill takes effect on July 1, 2004.